



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF TRANSPORTATION


1401 East Broad Street Richmond, Virginia 23219

Stephen C. Brich,  
P.E. Commissioner

### MEMORANDUM

Date: September 11, 2023

To: Virginia Design and Construction Communities; VDOT Location & Design, Construction, Maintenance, and Local Assistance Divisions; VDOT District Project Development Engineers, District Construction Engineers, District Maintenance Engineers, and District Environmental Managers

From: Chris Swanson, P.E., Environmental Division Director 

Subject: Proposed listing of the Tricolored Bat

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The purpose of this memo is to provide an update from VDOT's Environmental Division on the U.S. Fish and Wildlife Service's (USFWS) proposed listing of the tricolored bat (TCB) as "endangered" under the Endangered Species Act (ESA). As many of VDOT's projects receive federal funds or require other federal permits or authorizations, the focus of this memo is on Section 7 of the ESA. Projects that do not have federal funds or other permits or authorizations are still subject to other sections of the ESA. Additional information on the ESA is available on the USFWS website.

USFWS anticipates the TCB listing decision to be announced as early as mid-September. The Environmental Division is taking proactive measures to address the expected listing to avoid project delays or gaps in coordination. Section 7(a)(4) of the ESA requires federal agencies to confer "on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4..." Since TCB are proposed to be listed as endangered and are appearing on the Official Species List (OSL) for almost all VDOT projects currently being run through USFWS Information for Planning and Consultation (IPaC) website<sup>1</sup>, the Environmental Division is advising projects, through coordination with District Environmental staff or the project team's ESA technical lead, to confer with USFWS on potential impacts to TCB during the project review process prior to the listing decision. USFWS has indicated that early coordination on the proposed species will prevent projects from having to stop work in the event of listing the TCB during the project implementation phase. Conference opinions provided by USFWS for proposed species may be converted to a biological opinion after the final listing action, if requested.<sup>2</sup>

USFWS has indicated that they are working diligently to finalize the rule, consultation tools and guidance to implement the rule. USFWS has also advised that they are revising the FHWA/FRA/FTA Programmatic Consultation for Transportation Projects Affecting Northern Long-Eared Bat and Indiana Bat Determination Key to include TCB.

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<sup>1</sup> <https://ipac.ecosphere.fws.gov/>

<sup>2</sup> Conference opinions are available for proposed species to determine if an action is likely to jeopardize the continued existence of any proposed species. A conference opinion may be adopted as a biological opinion once a proposed species is listed later listed. See 50 CFR § 402.10.

We do not have specific timelines for the listing or the release of these tools to streamline Section 7 consultation at this time but will provide updated guidance as soon as it becomes available.

The current Range-Wide Indiana Bat & NLEB Survey Guidelines<sup>3</sup> may limit the use of emergence surveys for projects with TCB on the OSL to clear Section 7 consultation requirements. This will impact VDOT Environmental staff's ability to conduct these surveys to move projects forward after the effective date of the anticipated TCB listing. This is only applicable to emergence surveys and does not impact projects that have cleared Section 7 consultation by other means (time of year restriction, project activities, acoustic/mist net surveys, etc.).

VDOT staff may continue to conduct emergence surveys until the effective date of any listing decision for TCB, and USFWS may be able to approve specific circumstances for conducting emergence surveys after the listing on a case-by-case basis. Additionally, we hope that once the listing decision is announced, there will be more detailed guidance for project consultation/planning to prevent delays in VDOT projects.

VDOT Environmental Division continues to monitor and evaluate these developments daily. As soon as practicable, we will provide updates in a manner similar to this memorandum.

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<sup>3</sup> [Range-wide Indiana Bat and Northern Long-eared Bat Survey Guidelines | FWS.gov](#)